



SHI DOD ESI BPA Program Agreement

This Agreement is entered into between SHI and DOD. During the term of this Agreement, Enrolled Affiliates of DOD are permitted to acquire one or more Licenses for Microsoft products from our GSA MAS Contract pursuant to the following terms and conditions:

1. Definitions.

“agency affiliate” means (a) any other bureau, office, agency, or department of the United States Government agency with which you execute a government contract for enterprise products under this agreement.

“agency” means the bureau, office, agency, or department of the United States Government authorized to enroll under this agreement.

“available” means, with respect to a product, any license for that product available under the GSA Select License Program.

"Enhanced Desktop" means the configuration for which the following products have been chosen as enterprise products as of the Offer Deadline: (i) Windows OS Upgrade; (ii) Office Professional; (iii) Core CAL

"Enhanced with SQL Desktop" means the configuration for which the following products have been chosen as enterprise product as of the Offer Deadline: (i) Windows OS Upgrade; (ii) Office Professional; (iii) Core CAL; (iv) SQL CAL

“enrollment” means any agency or affiliate submitting a properly completed Enrollment Form.

“License” means any one of those offerings identified in the Product List, including standard licenses and upgrades for desktop operating systems, that provide the right to run the version of the product for which it is ordered.

“License Agreement/Product Use Rights” means the specific right Microsoft grants enrolled affiliates for each product it licenses and the general license agreement terms that apply to such products.

“L&SA” means a license and Software Assurance for any product ordered.

“Open Enrollment Period” means the period which begins on June 15, 2002, and which ends on June 26, 2003.



“Product Configuration” means the Standard Desktop, Enhanced Desktop, or Enhanced with SQL Desktop configuration required by the DOD ESA and listed hereto.

“Product List” means, with respect to any licensing program, the statement published by Microsoft from time to time that identifies the products that are or may be made available under GSA Select licensing programs and any product-specific conditions or limitations on the acquisition of licenses for those products.

“run” or “use” means to copy, install, use, access, display, run other or otherwise interact with.

“Software Assurance” means, for any underlying licenses product for which it is ordered, the right to upgrade to, and run, the latest version of that product available during the three-year period from the date the order for Software Assurance is accepted by SHI.

"Standard" Desktop means the configuration for which the following products have been chosen as enterprise products as of the Offer Deadline: (i) Windows OS Upgrade; (ii) Office Professional; (iii) Exchange CAL; (iv) Windows CAL; (v) SMS CAL.

“Volume Level” means the number of qualified desktops from which product pricing levels are determined.

2. How the DOD ESI BPA Agreement works..

This program allows customers to license Microsoft products at discount pricing based on the combined volume of licenses. Agencies or Agency Affiliates may participate in this program by submitting one or more Enrollment Forms under this Agreement. Once enrolled, the Enrolled Agency or Agency Affiliate may run as many copies as have been ordered and obtain master media and documentation during the Enrollment Period. Product support is not included with the licenses under this Agreement.

3. How to order product licenses.

On the Enrollment Form, a customer will designate the scope of the enrolled affiliate's enterprise and make the initial selection of enterprise products and any additional products the enrolled affiliate wishes to license *from the products identified in Attachment A Pricelist*. Each enrollment must include at least one of those products that SHI makes available to license as an enterprise product.

a. Placing Orders. Orders must be submitted for all copies of any products an Enrolled Affiliate runs. Unless an Enrolled Affiliate is eligible to order just Software Assurance as described below,



each order must be for either a License or L&SA.. All orders must report the countries where the Enrolled Affiliate runs the license products under this Agreement and the approximate number of copies run in each of those countries. This information is for internal use only.

b. When an Agency is eligible to order just Software Assurance. You may order Software Assurance without the need to simultaneously order a new license for those copies, in the following circumstances:

1. At the beginning of a new Enrollment, you may order copies of products for which you previously obtained perpetual licenses through Upgrade Advantage or Software Assurance, so long as the new Software Assurance is effective no later than one day following the expiration of that protection.
2. During the term of Enrollment, you may be eligible to order Software Assurance for copies of certain products licenses you obtained through retail sources or from an original equipment manufacturer (OEM), provided that you place the order within the required time frame.
3. You may order Software Assurance in any other circumstances expressly permitted in the Product List.
4. You may renew Software Assurance as described in this Agreement Section How To Renew SA.
5. ***Transfer Rights.*** If an Enrolled Affiliate intends to transfer more than ten (10%) of its computers in connection with a privatization of its government operations, and as a result it would like to transfer the copies of the products running on those computers prior to the expiration date of the enrollment, SHI will work with you in good faith to arrange for acceleration of any remaining payments for those copies run pursuant to Software Assurance or L&SA, to allow for the transfer of perpetual licenses for such copies.

The Microsoft License/Product Use Rights (PUR) grants the right of license transfer to another agency of the US Government if the enrollee is an agency of the US Government. The transfer rights of the PUR are clarified to include the right to transfer among DoD Agencies, as well as DoD components within Agencies.

4. License Grant-What Enrolled Agencies are allowed to run..

At any time after the Enrollment effective date, each enrolled Agency and Affiliate may run as many copies as it chooses of any available products, provided that an order is submitted



for all such copies as required under Paragraph 3.a. Placing Orders. Each Agency and Affiliate may run in place of any product version it licenses, a prior version of the same product.

License Only. An Enrolled Agency's or Affiliate's right under this Agreement to run copies of any product is temporary until that License is paid for in full. Thereafter, the Enrolled Agency or Affiliate will have a perpetual license to run the number of copies paid in the version ordered.

L&SA or Software Assurance. An Enrolled Agency's or Affiliate's right under this Agreement to run copies of any product is temporary until one of the following occurs: a. you have paid the total price or b. you are entitled to perpetual licenses upon early termination.

5. *Making copies of software.*

Copies for internal deployment. Each enrolled affiliate may make as many copies of the products licensed under the enrollment as necessary to distribute the products to its users within its enterprise. All copies of any product must be true and complete copies, including copyright and trademark notices, and be made from CD ROMs, disk sets, or a network source acquired from or made available by a Microsoft approved fulfillment source. Enrolled Agencies and Affiliates must make reasonable efforts to make their employees, agents and other individuals running a product aware that the product is licensed and may only be run or transferred subject to the terms of this Agreement.

Copies for training, evaluation, research and development (including Research Labs) and back-up. During the term of the enrollment, each enrolled Agency or Affiliate may run up to twenty (20) complimentary copies of any additional product in a dedicated training facility on their premises, run up to ten (10) complimentary copies of any product as an additional product for a sixty (60) day evaluation period, run complimentary copies of enterprise products and additional products on one (1%) percent of the enrolled affiliates qualified desktops for research and development purposes, and make or retain one copy of any license product for back-up archival purposes for each distinct geographic locations.

Re-Imaging Rights. If an enrolled Agency or Affiliate licenses any product from an OEM, retail source, or any Microsoft program other than this Agreement, it may install copies from the media provided under this Enterprise Agreement enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions: (i) The enrolled affiliate must have obtained a separate license from the separate source for each copy being replaced; (ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media

provided under an enrollment must be identical to the product, language, version and all components of the copies they replace; (iii) IN the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection, the product type (e.g. upgrade or full license) of the copies made from the media provided under an enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of a desktop operating system made from the media provided under the enrollment you submit on its behalf in place of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language, and version are identical.

The use of any copies made under this subsection is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

6. *Pricing*

Product pools from which an enterprise product has been ordered. For each product pool from which you order an enterprise product, the price level throughout the initial term of the enrollment for any enterprise products or additional products ordered from that pool will be the price level for which you qualify based on its initial number of qualified desktops

Renewal price levels. Price levels for pools from which an enterprise product has been ordered will be reset for each renewal term based upon the total number of qualified desktops as of the date of the renewal order for that renewal term.

For enrollments signed during the Open Enrollment Period, the following shall apply:

The Year 1 per-desktop price for each Product Configuration covered by each such enrollment, for each qualified desktop irrespective of the number of qualified desktops under such Enrollment, shall be determined according to the Forecasted Volume Level. Once established, price levels may be adjusted from time to time based on actual license purchase volume. The year 1 per-desktop price for each Product Configuration covered by each enrollment, for each desktop irrespective of the number of qualified desktops under such enrollment, shall be re-leveled according to the actual Volume Level of total enrollments that was achieved during the Open Enrollment Period. If the actual Volume Level at the expiration of the Open Enrollment Period is different from your Forecasted Volume Level, we will adjust your price level up or down as appropriate, i.e. (i) the difference between the price level in Forecasted Volume Level and the price level for the actual Volume Level will be split between the remaining two years of the affected enrollment, and (ii) the price level



for the remaining two years of the enrollment will be adjusted to reflect the actual Volume Level.

The Year 2 and Year 3 per-desktop prices are based on the actual aggregate Volume Level for each product configuration on the date 30 days prior to the 2nd or 3d anniversary date of enrollment, as appropriate. For example: The year 1 Forecasted Volume for new enrollments is 100,000 to 199,999 qualified desktops, resulting in a Standard Desktop price of \$235.13. The actual number of qualified enrollments enrolled during the Open Enrollment Period is between 200,000 and 299,999 resulting in a Standard Desktop price of \$233.05. The difference between the per-desktop price for the Forecasted Volume Level and actual Volume Level (\$2.08) is split equally as an adjustment to the year 2 and year 3 payments (deduct \$1.04 in each year), and the price for years 2 and 3 is further adjusted to reflect the actual Volume Level (\$232.01).

7. *Term and Termination*

The term of this Agreement will be August 1, 2002, to June 26, 2003, unless terminated earlier. No new orders or enrollment requests will be accepted under this Agreement after June 26, 2003, however the terms of this Agreement will remain in effect with respect to orders for Software Assurance submitted before June 26, 2003, for the full three (3) year term from date of purchase of Software Assurance coverage.

Termination for convenience of the Government under SHI's GSA Schedule terms and conditions to which an enrollment applies are allowed. Either party may terminate if the other party materially breaches its obligations under this Agreement, including any obligation to pay amounts owed. If you fail to order Software Assurance coverage under this Agreement for any products licensed under this Agreement, then you will not be permitted to order Software Assurance for those copies later without first acquiring L&SA.

If an Agency Affiliate terminates or does not make payment on their Enrollment after the first year, they are entitled to retain thirty-three (33%) percent of the Licenses for their Desktop Configuration. If an Agency Affiliate terminates or does not make payment on their Enrollment after the second year, they are entitled to retain sixty-six (66%) of the Licenses for the Desktop Configuration.

8. ***Temporary Use of Software During Times of Conflict*** During the term of this agreement each enrolled affiliate, during Temporary Expeditionary Deployments ("TEDS"), enrolled affiliate may temporarily deploy and install or use on, or access from qualified desktops or servers, the enterprise products, including the Standard Desktop Configuration, Enhanced Desktop Configuration, or Enhanced with SQL Desktop Configuration and the additional products, all described in Attachment A (the "Software" on an unlimited number of qualified



desktops or servers being used as part of the TEDs ("Temporary Use"). For purposes of this subsection, the term "Temporary Expeditionary Deployments" or "TED's" shall refer to any number of software licensed products enrolled under this agreement which may be used at no additional cost by the DOD enrolled affiliate. The coverage will extend to deployments away from in-garrison locations (any military post or government office where, troops or civilian personnel are at a permanent location, deployment locations in support of war games, exercises, real world contingencies, and emergency situations similar to the terrorist attacks on 9/11/01, where temporary duty stations were needed due to the destruction of government offices. Each Enrolled Agency Affiliate will make a record of the count of each category of license used while deployed and the period of use. After the TED and upon request, the count and duration information, but not the deployed location information, will be provided to SHI for auditing purposes. Such Temporary Use of the software is limited to a period equal to the length of the TED or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by us. At the end of the six month period or as mutually agreed to, each Enrolled Agency Affiliate will provide written certification that the licenses have either been destroyed or payment has been made under this agreement. The enrolled affiliate agrees to use the products in accordance with the terms contained in this agreement and the applicable version of the License Agreement - Product Use Rights. If DOD enrolled affiliate requires use of the Software beyond the Temporary Use Period and such extended use has not been approved by us, Enrolled Agency Affiliate shall purchase the products. Enrolled Agency Affiliates must submit an update statement within ten (10) days following each anniversary of the effective date of the enrollment, and after expiration or termination of such enrollment, on a form we provide, and place True-Up orders to account for additional Desktops Configurations. Even if the number has not increased, an update statement shall be provided indicating the number has not changed.

9. ***GFE Non-Portable Computer Use Rights.*** DoD has adopted a Teleworking Policy which implements the requirements of Section 359 of Public Law No. 106-346, which requires each Executive Agency to establish a policy under which eligible employees of the agency may participate in Teleworking to the maximum extent possible without diminished employee performance. Enrolled Agency Affiliates shall have the right to grant to those persons participating under DoD Teleworking Policy and who have been issued Government Furnished Equipment (GFE) non-portable desktop in lieu of portable computer, the portable use rights under the applicable License Agreement-Product Use Rights (PUR). The portable use rights will apply to such GFE desktop or to a portable computer, but not both. Each Enrolled Affiliate will provide to SHI on behalf of Enrolled Agency Affiliate each calendar quarter during the term of the agreement, a written report detailing the number of Enrolled Affiliates using portable use rights on GFE issued non-portable computers under the Teleworking Policy.